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November 8, 2022

VIA ECF

The Honorable Sarah Netburn
Thurgood Marshall United States Courthouse
40 Foley Square, Room 430
New York, NY 10007

Re: *In re Terrorist Attacks on September 11, 2001*, 03-md-1570 (GBD) (SN)

Dear Judge Netburn:

This firm, together with Morvillo Abramowitz Grand Iason & Anello P.C., represents Kreindler & Kreindler (“K&K”) in connection with the Court’s Opinion and Order, dated September 21, 2022 (the “Order”). This letter addresses Defendant Kingdom of Saudi Arabia’s suggestion, in its reply brief in support of its motion for attorneys’ fees (“Reply Brief”), that K&K “declined” to meet and confer regarding reasonable attorneys’ fees as directed by the Court. *See* ECF 8699 at p. 1 & n.1. Because Saudi Arabia raised the issue only in its Reply Brief, and because Saudi Arabia is wrong on both the facts and the law, we write to correct the record.¹

First, Saudi Arabia did not suggest in its moving papers that there was any failure to meet and confer. This Court should therefore reject Saudi Arabia’s argument for this reason alone. *Sigmon v. Parker Chapin Flattau & Klimpl*, 901 F. Supp. 667, 677 n.5 (S.D.N.Y. 1995) (arguments may not be made for the first time in a reply brief) (collecting cases).

Second, Saudi Arabia misstates the facts. Though directed to meet and confer on a reasonable fee within two weeks of the Order, Saudi Arabia did not reach out to K&K until ten days later, on Saturday, October 1, 2022. Saudi Arabia sent a three sentence email that did not seek to meet and confer as directed, but conclusively stated, with no backup or explanation, that “Saudi Arabia intends to seek \$1,401,869.00 in fees and \$36,504.42 in costs. Please let us know whether Kreindler and Kreindler will agree to pay these amounts.” A true and correct copy of the e-mail chain between Emily Kirsch and Andy Shen is attached as Exhibit A.²

Counsel for K&K requested the backup “in order to have a productive call once we have had a chance to review.” *Exhibit A*. Saudi Arabia sent the requested backup at 7:51 pm Monday night,

¹ By merely correcting the record and Saudi Arabia’s misstatements with respect to this one belated argument, K&K does not intend to waive and does not waive any of its other opposition arguments.

² Exhibit A is identical to Exhibit J to Saudi Arabia’s motion for attorneys’ fees, ECF 8624-10, except that Saudi Arabia’s version of the email chain notably omits the last message in which Mr. Shen declines to speak further with Ms. Kirsch despite her offer “I am available to discuss.””

KIRSCH & NIEHAUS

October 3. (When Saudi Arabia was forced to produce the backup, it inexplicably revised its fees downward). *Id.* K&K immediately flagged that it had questions and concerns about the request's reasonableness based on a quick review, but because counsel would be out of the office beginning mid-afternoon on Tuesday October 4 for Yom Kippur, the mere five business hours Saudi Arabia afforded K&K would not provide time to review the records carefully, confer with the client, and meet and confer meaningfully before the October 5 filing deadline. *Id.*

Saudi Arabia, recognizing that it had been dilatory, unilaterally sought an extension from this Court. ECF 8612.³ Counsel then sought to meet and confer on Friday, October 7, but schedules did not align. *Id.* K&K therefore previewed its position in writing, noting that we “certainly have questions and concerns about the **reasonableness of the rates, the number of people involved, the number of tasks undertaken and the number of hours spent on each task.**” *Id.* (*emphasis added*). Though it was K&K's position that no fee is reasonable while its objections are pending, the e-mail clearly stated: “I am available if you still wish to discuss.” *Id.* It was Saudi Arabia that declined to further discuss or hear the specifics, not K&K. *See id.* (Mr. Shen responding, “We will note your position. Have a good weekend.”).

These facts are not only a far cry from the facts of the *Freedom Watch* case,⁴ miscited by Saudi Arabia, but are also a far cry from the misleading narrative presented by Saudi Arabia, suggesting that K&K did not take its meet and confer obligations seriously. ECF 8699 at p. 1. K&K absolutely met and conferred in good faith, gave Saudi Arabia fair notice that it found (i) the rates; (ii) number of timekeepers; (iii) number and scope of tasks; and (iv) amount of time spent on each task all unreasonable. Saudi Arabia declined to make itself available to discuss the specifics. What is more, by failing to advise the Court in its initial application of these four points of unreasonableness raised by K&K, Saudi Arabia did not in fact “note [K&K's] position” fully as it said it would.

Third, Saudi Arabia's suggestion that there is legal support for the argument that this Court has a basis to disregard K&K's objections is also misguided. In *Freedom Watch*, the relevant party was twice specifically ordered to meet and confer to “narrow the issues in dispute,” but the party's counsel repeatedly refused to talk with his adversary over a period of months about the issues, did not review the underlying material subject to the order to meet and confer, and specifically told opposing counsel “I don't care to narrow the issues.” *Id.* at 22. Here, counsel for K&K indicated the categories of reasonableness objections and was available to discuss. Saudi Arabia declined to hear the details. Saudi Arabia's belated and meritless argument that the Court may disregard K&K's objections as a procedural matter must be rejected.

Respectfully Submitted,

/s/ Emily Kirsch
Emily Bab Kirsch

³ Saudi Arabia's statement that it requested extra time for K&K to “further review” the provided fee-and-expense schedule backup is misleading – at best. Reply at 1.

⁴ *Freedom Watch, Inc. v. U.S. Dep't of State*, 324 F.R.D. 20, 21-23 (D.D.C. 2018).

Exhibit A

From: [Shen, Andrew C.](#)
To: [Emily Kirsch](#)
Cc: [Kellogg, Michael K.](#); [Rapawy, Gregory G.](#); [Young, Christopher M.](#)
Subject: Re: [EXTERNAL] RE: In re. 9/11
Date: Friday, October 7, 2022 5:00:07 PM

Emily -

We will note your position in our fee application. Have a good weekend.

Thanks,

Andy

On Oct 7, 2022, at 4:46 PM, Emily Kirsch <emily.kirsch@kirschniehaus.com> wrote:

Andy:
Unfortunately, my call ran late.

We have reviewed your time and expenses and certainly have questions and concerns about the reasonableness of the rates, the number of people involved, the number of tasks undertaken and the number of hours spent on each task. But in light of our pending motion to stay now and our forthcoming objections, our position is that because the Magistrate Judge's opinion is incorrect in finding that K&K was complicit in the leak or that its internal investigation was deficient, no fee is reasonable. I am available if you still wish to discuss.

Emily

From: Shen, Andrew C. <ashen@kellogghansen.com>
Sent: Friday, October 7, 2022 12:29 PM
To: Emily Kirsch <emily.kirsch@kirschniehaus.com>
Cc: Kellogg, Michael K. <mkellogg@kellogghansen.com>; Rapawy, Gregory G. <grapawy@kellogghansen.com>; Young, Christopher M. <cyoung@kellogghansen.com>
Subject: RE: [EXTERNAL] RE: In re. 9/11

Thank you. Please call me at [REDACTED] if your call ends early. If not, I can call you at around 5pm today or 1:30pm on Monday.

From: Emily Kirsch <emily.kirsch@kirschniehaus.com>

Sent: Friday, October 7, 2022 12:24 PM
To: Shen, Andrew C. <ashen@kelloggghansen.com>
Cc: Kellogg, Michael K. <mkellogg@kelloggghansen.com>; Rapawy, Gregory G. <grapawy@kelloggghansen.com>; Young, Christopher M. <cyoung@kelloggghansen.com>
Subject: RE: [EXTERNAL] RE: In re. 9/11

Technically, I'm booked until 4. I think my prior call will end early, so I'm happy to try to give you a call at 3:30 if I free up. Otherwise, I'm free from 4pm on and Monday is wide open (though it's a holiday).

From: Shen, Andrew C. <ashen@kelloggghansen.com>
Sent: Friday, October 7, 2022 11:54 AM
To: Emily Kirsch <emily.kirsch@kirschniehaus.com>
Cc: Kellogg, Michael K. <mkellogg@kelloggghansen.com>; Rapawy, Gregory G. <grapawy@kelloggghansen.com>; Young, Christopher M. <cyoung@kelloggghansen.com>
Subject: RE: [EXTERNAL] RE: In re. 9/11

Hi Emily –

I have another call that starts at 4pm. I can do any time before that.

Thanks,

Andy

From: Emily Kirsch <emily.kirsch@kirschniehaus.com>
Sent: Friday, October 7, 2022 11:48 AM
To: Shen, Andrew C. <ashen@kelloggghansen.com>
Cc: Kellogg, Michael K. <mkellogg@kelloggghansen.com>; Rapawy, Gregory G. <grapawy@kelloggghansen.com>; Young, Christopher M. <cyoung@kelloggghansen.com>
Subject: RE: [EXTERNAL] RE: In re. 9/11

How is 4pm?

From: Shen, Andrew C. <ashen@kelloggghansen.com>
Sent: Friday, October 7, 2022 9:23 AM
To: Emily Kirsch <emily.kirsch@kirschniehaus.com>
Cc: Kellogg, Michael K. <mkellogg@kelloggghansen.com>; Rapawy, Gregory G. <grapawy@kelloggghansen.com>; Young, Christopher M. <cyoung@kelloggghansen.com>

Subject: Re: [EXTERNAL] RE: In re. 9/11

Emily -

I will be traveling on Monday and Tuesday. If you would like to discuss this, can you please propose a time today.

Thanks,

Andy

On Oct 4, 2022, at 11:27 AM, Emily Kirsch
<emily.kirsch@kirschniehaus.com> wrote:

Andy –

A quick review of this backup suggests that we do have meaningful questions and concerns about its reasonableness. However, it is unfortunate you waited until 8:00 pm last night to provide this information. I simply don't have time to digest it fully and engage in a constructive meet and confer with you before I need to leave the office mid-afternoon for Yom Kippur.

If you choose to file your motion tomorrow (as ordered) and not seek an extension, please include this email to explain why we are unable to meet and confer.

Regards,
Emily

From: Shen, Andrew C. <ashen@kellogghansen.com>

Sent: Monday, October 3, 2022 7:51 PM

To: Emily Kirsch <emily.kirsch@kirschniehaus.com>

Cc: Kellogg, Michael K. <mkellogg@kellogghansen.com>; Rapawy, Gregory G. <grapawy@kellogghansen.com>; Young, Christopher M. <cyoung@kellogghansen.com>

Subject: RE: In re. 9/11

Emily –

I've attached spreadsheets of our time records and costs relating to Kreindler & Kreindler's breach. We have revised the amount of fees we are seeking to \$1,390,281.50. The costs remain the same. Please let us know if you would like to discuss.

Regards,

Andy

Andrew C. Shen
Kellogg, Hansen, Todd, Figel & Frederick P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
Direct: (202) 326-7963
Fax: (202) 326-7999

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From: Emily Kirsch <emily.kirsch@kirschniehaus.com>
Sent: Monday, October 3, 2022 12:43 PM
To: Shen, Andrew C. <ashen@kellogghansen.com>
Cc: Kellogg, Michael K. <mkellogg@kellogghansen.com>; Rapawy, Gregory G. <grapawy@kellogghansen.com>; Young, Christopher M. <cyoung@kellogghansen.com>
Subject: [EXTERNAL] RE: In re. 9/11

Andy:

As you know, the Magistrate Judge ordered us to meet and confer on a reasonable fee award. To that end, would you kindly send us the backup for those amounts and we can have a productive call once we have had a chance to review.

From: Shen, Andrew C. <ashen@kellogghansen.com>
Sent: Saturday, October 1, 2022 9:57 AM
To: Emily Kirsch <emily.kirsch@kirschniehaus.com>
Cc: Kellogg, Michael K. <mkellogg@kellogghansen.com>; Rapawy, Gregory G. <grapawy@kellogghansen.com>; Young, Christopher M. <cyoung@kellogghansen.com>
Subject: In re. 9/11

Emily –

I write regarding the Court's September 21, 2022 Order requiring Kreindler & Kreindler to pay Saudi Arabia's fees and costs associated with investigating and addressing Kreindler & Kreindler's breach of the Protective Orders. Saudi Arabia intends to seek \$1,401,869.00 in fees and \$36,504.42 in costs. Please let us know whether Kreindler & Kreindler will agree to pay these amounts.

If you would like to discuss by phone, please let me know if you are available on Monday.

Thanks,

Andy

Andrew C. Shen
Kellogg, Hansen, Todd, Figel & Frederick P.L.L.C.
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